IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2037 OF 1992

Shri Vishnu Ramchandra Joshi,
54/11, Shankar Kutir,
Second Floor, Sion (East),
Bombay - 400 022. .. Petitioner

Versus

1. Maharashtra State Textile
Corporation Ltd.,
A Government of Maharashtra
Undertaking, 33A, Lotus House,
First Floor, Sir Vithaldas
Thakersey Marg,
New Marine Lines,
Bombay - 400 020.

2. Shri Prakash Kallappa Awade,
Chairman, M.S.T.C. Ltd.,
33-A, Lotus House,
First Floor, Sir Vithaldas
Thakersey Marg, New Marine
Lines, Bombay - 400 020.

3. Shri Rakesh Chandra Joshi,
Managing Director,
M.S.T.C. Ltd., 33-A,
Lotus House, First Floor,
Sir Vithaldas Thackersey
Marg, New Marine Lines,
Bombay - 400 020.

4. Western India Spg.& Mfg.Mills
Dattaram Lad Path,
Kalachowki, Bombay - 400 033.

5. Shri P.G.Sukhtankar,
General Manager,
Western India Spg.& Mfg.Mills
Dattaram Lad Path,
Kalachowki, Bombay - 400 033. .. Respondents

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Shri S.N.Deshpande for the petitioner.

Shri I.A.Sayyed for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 23rd AUGUST, 2005.

**ORAL JUDGMENT : ( Per R.M.S.Khandeparkar, J )**

1. Heard. The petitioner seeks relief in the nature of direction to the respondents to pay all the dues payable to the petitioner pursuant to the order passed by the respondents terminating the services of the petitioner with effect from 18th November, 1991. Though initially the petition was filed challenging the order of dismissal, the learned Advocate appearing for the petitioner has restricted the challenge to the dues payable by the respondents to the petitioner, consequent to the termination of his services. Being so, it is not necessary to go into the issue regarding the legality of the order of termination of service of the petitioner.

2. Pursuant to the order of termination dated 18th November, 1991, the petitioner through his lawyer

served a notice upon the respondents calling upon the respondents to pay all his legal dues, such as, Gratuity, Medical Reimbursement Allowance, Hospitalisation Charges, Leave Encashment, Family Pension, etc., as inspite of his earlier registered letter dated 20th March, 1992, the respondents had failed to pay such dues to the petitioner. In response to the said notice, the respondents through their Advocate informed that considering the provisions of the Payment of Gratuity Act, 1972, and in particular the Section 4(6)(b)(i) thereof, the gratuity amount has been denied to the petitioner. As regards the medical expenses, it was informed by the respondents that consequent to the dismissal of the petitioner with effect from 20th November, 1991, he was not entitled for reimbursement of the medical expenses from that date. Besides that, out of the reimbursable limit of Rs.11,250.35ps., the petitioner was already reimbursed with a sum of Rs.7,070.35 ps., and therefore, he would be eligible for reimbursement for the medical expenses to the tune of Rs.4,180/-, subject to the production of medical bills to the respondents. Further, as regards the claim for reimbursement towards kidney operation undergone by the petitioner at Hinduja Hospital on 25th July, 1991, he was informed that, as per the then existing rules,

the hospitalisation and medical expenses over and above the normal eligible limit could be reimbursed to the full extent in case of treatment for Cancer, Leprosy, and T.B.. However, as regards the other illness, as a special case, the petitioner was sanctioned Rs.12,800/- as per the practice prevailing in case of all employees, which is calculated at 100% of cost of medicines, 50% of Doctor's bills and 50% of other admissible expenses. Further that an amount of Rs.3,840/- was being deducted therefrom at source as per the provisions of the Income Tax Act then applicable, and the balance amount of Rs.8,960/- was sent to the petitioner under a crossed cheque dated 31st August, 1991 which was refused by him. As regards the claim towards leave encashment, it was informed to the petitioner that only those employees who resign or retire from the services could be allowed the encashment of earned leave by the competent authority of the respondents and since the petitioner was dismissed from the service, he was not entitled for encashment of any such earned leave. As regards the claim for family pension, the petitioner was asked to file necessary application to the Western India Mills Employees Provident Fund Trust, and therefore, he was asked to approach the said Trust for settlement of family pension dues. The petitioner

thereupon, through his Advocate, served the notice dated 4th July, 1992 calling upon the respondents to furnish him the copies of the documents regarding rules relating to reimbursement of medical expenses and hospitalisation charges on the basis of which the petitioner's claim was sought to be partly rejected and partly allowed by the respondents as well as the documents relating to the practice prevailing in cases of all employees in respect of hospitalisation and medical expenses as also the documents relating to the Leave Encashment Rules and Revised Wages Arrears Rules, as applicable to the employees of the respondents. Further, reminder in that regard was sent to the respondents on 25th July, 1992 informing them that no such documents had been furnished till then to the petitioner. It was also informed that the petitioner was ready to bear the expenses and the cost for getting the copies of those documents, if needed.

3. When the matter came up for hearing, the learned Advocate appearing for the respondents sought to raise preliminary objection to the effect that the matter relates to the monetary claim, and therefore, there being an alternative efficacious remedy for the petitioner and that there are disputed questions of facts, therefore, the question of seeking relief in

writ jurisdiction does not arise. It is pertinent to note that the rule was issued in the matter on 29th September, 1992, after hearing the Advocates for both the parties. At no point of time, either at the time of issuance of rule or any time thereafter, the respondents had sought leave to raise the issue regarding non-maintainability of the petition, either on account of availability of an alternative efficacious remedy to the petitioner, or on the ground that this is a monetary claim, or that there are disputed questions of fact.

4. Undoubtedly, as regards the ground of non-maintainability of the petition on the ground of disputed questions of fact, the same can always be raised after issuance of rule, irrespective of the fact whether the respondents have reserved their right in that regard while issuing rule or not. However, as regards the objection about availability of alternative remedy as the matter relates merely to a monetary claim, and that therefore, the Court should refrain from exercising the writ jurisdiction, such an objection has necessarily to be taken before issuance of the rule, unless a specific right in that regard is reserved by the respondents at the time of issuance of rule. Since no such right is reserved by the

respondents, the question of allowing the respondents to raise preliminary objection in that regard, and that too, after a lapse of 14 years after the date of issuance of the rule in the petition does not arise.

5. As regards the ground of involvement of disputed questions of fact in order to enable the respondents to raise such contention, it is necessary for the respondents to point out the facts which can be said to be disputed or disputable facts. It is not mere availability of opportunity to the respondents to dispute the fact that is sufficient to get the petition dismissed as being not maintainable on that count but the respondents raising objection in that regard have to disclose from the materials on record placed either by the petitioner or by the respondents, that there are, infact, disputed or disputable questions of facts involved in the matter. Mere availability of opportunity to dispute the fact that by itself will not entitle the respondents to justify the contention about non-maintainability of the petition on that count. In the case in hand, the dispute is apparently seen in relation to the right of the petitioner to claim certain amount and not in relation to the factual aspect of such right of the petitioner. Being so, merely because certain rights

are disputed, it would not amount to say that there are disputed questions of fact. Hence, the objection pertaining to the disputed questions of fact is totally devoid of substance.

6. As regards the merits of the case, the contention of the petitioner is that consequent to the termination of his service form 18th November, 1991, apart from the family pension, the respondents owed to the petitioner the following dues.

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| 1. | Gratuity | Rs. 31,903.84 |
| 2. | Earned Leave Encashment 180 days | Rs. 47,400.00 |
| 3. | Pay difference due to Revised Pay Scale from 1987 to August 1991 (Approx.) | Rs. 62,400.00 |
| 4. | Medical Reimbursement upto 7-8-1991. | Rs. 05,527.00 |
| 5. | Hospitalisation charges | Rs. 40,676.00 |
| | | Total Rs.1,87,906.84 |
| | Less Medical Reimbursement | Rs. 05,527.00 |
| | | Rs.1,82,379.84 |

The respondents have not filed any affidavit-in-reply to the said claim of the petitioner. The learned Advocate for the respondents however referring to the reply dated 27th May, 1992, sent by the Advocate for

the respondents to the Advocate for the petitioner, has strenuously argued that the petitioner has not substantiated his claim in relation to the earned leave, revision of pay scale, medical expenses and hospitalisation charges with necessary documentation. He has further submitted that even an attempt on the part of the management to forward necessary reimbursement towards the medical expenses was foiled by the petitioner himself by rejecting the cheque submitted in that regard.

7. Upon hearing the learned Advocates for the parties and perusal of the records, the only point which arises for our consideration is whether the petitioner has been able to establish his entitlement of the dues claimed by him in the paragraph 12 of the petition i.e. as regards the gratuity amount, encashment of earned leave, pay difference due to revised pay scale, and reimbursement of medical expenses and hospitalisation charges, and family pension, as stated in paragraph 6 hereinabove.

8. As regards the gratuity amount, Section 4(6)(b)(i) of the said Act provides that the gratuity payable to an employee may be wholly or partially forfeited, if the services of such employee have been

terminated for his riotous or disorderly conduct or any other act of violence on his part. The learned Advocate appearing for the respondents has fairly submitted that he is unable to justify the action on the part of the respondents in forfeiting the amount by invoking the said provision. Indeed, the records nowhere disclose that the petitioner's services were terminated either for riotous or disorderly conduct or any other act of violence on his part. The order dated 18th November, 1991 nowhere discloses any such act being caused for the termination of his services. Being so, the respondents were not justified in withholding the gratuity amount by invoking the provisions comprised under Section 4(6)(b)(i) of the Payment of Gratuity Act, 1972. Certainly, therefore, the respondents would be liable to pay entire gratuity amount legally payable to the petitioner.

9. As regards the claim pertaining to the encashment of earned leave for 180 days, apart from mere denial in the letter dated 27th May, 1992, the respondents have not been able to disclose any justifiable ground for denying the right to the petitioner for encashment of earned leave. There is no dispute about the fact that the petitioner had rendered necessary qualifying services for the

relevant period in order to enable him to claim the earned leave. The only contention which was sought to be raised, in that regard, is that in view of the termination of services of the petitioner, the petitioner is not entitled to claim encashment of the earned leave. However, the respondents have not been able to show any statutory provision or terms of contract between the petitioner and the respondents which can entitle the respondents to deny such right to the petitioner. Being so, the petitioner would also be entitled to claim and the respondents would be liable to pay to the petitioner the amount claimed by the petitioner towards encashment of the earned leave for 180 days.

10. As regards the claim towards difference of wages due to revised pay scale, undisputedly, no such claim was putforth by the petitioner under a letter dated 2nd May, 1992. The petitioner has not disclosed any document which can reveal any such claim having been made by the petitioner prior to the filing of the petition. Obviously, there was no occasion for the respondents to deny such claim prior to the filing of the petition. In fact, it was for the first time in paragraph 16(k) of the petition stated that the petitioner had sought to claim for difference of wages

as per the revised pay scale. It was stated in the said petition that the petitioner was also entitled to get the difference of wages as per the revised pay scale which was implemented by the respondent No.4 with retrospective effect from 1st April, 1987 in respect of all the employees. However, as rightly submitted by the learned Advocate for the respondents, the petitioner has not substantiated the said claim by producing any document regarding such revision of pay scale. Once it is undisputed fact that the petitioner had not made any claim before filing of the petition and has sought to raise such claim for the first time in the petition, it is necessary for the petitioner to substantiate such claim by producing necessary documentary materials in support of his plea in that regard. The learned Advocate for the petitioner, however, has sought to contend that the averments in that regard in the petition have not been denied by the respondents. Indeed, in case of absence of denial by the respondents of any statement of fact, the Court is entitled to presume that such statement of fact has been admitted by the respondents. However, when it relates to the issue regarding the right of a party based on certain facts, it is necessary for the party approaching the Court by way of writ petition to make categorical statement of fact with necessary clarity

and substantiate the statement of fact with necessary documentation to be filed along with the petition. Mere inaction or failure on the part of the respondents to deny the contention of the petitioner that by itself cannot enure to the benefit of the petitioner to insist for the relief based on such uncorroborated statements in the petition. Being so, merely because the statement in that regard has not been denied by the respondents, that by itself will not entitle the petitioner to claim alleged difference of wages based on the alleged revision in the pay scale. There is absolutely no material before us to accept the contention on behalf of the petitioner that, in fact, there had been any revision of pay scale in the year 1987 in relation to the employees of the respondents, and therefore, the claim of the petitioner, as regards the difference of wages based on the revised pay scale, is to be rejected.

11. As regards the claim pertaining to the reimbursement of medical expenses and hospitalisation charges, the right to claim such reimbursement is not in dispute. The respondents have heavily relied upon their Advocate’s letter dated 27th May, 1992 to claim certain restrictions upon such right of the petitioner. However, the said letter nowhere

discloses any specific rule which can disclose any such restrictions on the right of the petitioner to claim such reimbursement of medical expenses and hospitalisation charges. It is pertinent to note that after the service of the said letter dated 27th May, 1992, the petitioner had been consistently requesting the respondents to furnish copies of the relevant rules pertaining to the right of an employee for reimbursement of medical and hospitalisation expenses, and yet the respondents did not furnish the same to the petitioner, at any point of time. The petitioner had even expressed his desire to bear the costs for furnishing the copies of the rules regarding reimbursement of the medical and hospitalisation expenses, however, there was no response from the respondents. What is further surprising is that, in respect of the petition, which has been filed specifically claiming such reimbursement to the petitioner, the respondents have not filed any affidavit-in-reply describing as to how the petitioner is not entitled to claim such reimbursement, nor in the course of arguments the respondents have been able to disclose any rule regarding medical and hospitalisation expenses which can disentitle the petitioner from claiming the same. Being so, the petitioner would certainly be entitled for

reimbursement of the medical expenses and hospitalisation charges incurred by him till or prior to the date of his termination from the services of the respondents, ofcourse, subject to the production of necessary bills, in case such bills have not yet been produced by the petitioner to the respondents.

12. As regards any other dues including the dues of family pension, needless to say that the petitioner would also be entitled for the same, subject, ofcourse, to filling of the necessary applications, if legally required, and submitting those forms to the respondents so as to enable them to take necessary steps to forward the same to the competent authorities to do the needful in the matter to enable the petitioner to get necessary legal dues payable to him.

13. For the reasons stated above, therefore, the petition succeeds. The respondents are directed to pay to the petitioner the dues legally payable in relation to the gratuity amount, encashment of earned leave, reimbursement of medical expenses and hospitalisation charges, and all other dues except the amount claimed on account of the alleged revised pay scale as expeditiously as possible and within a period of 12 weeks from today with the interest at the rate

of 10 per cent per annum to be calculated from 29th September, 1992. As regards the family pension, the petitioner shall furnish necessary documentation as required under the provisions of law and the respondents to do the needful in that regard within a period of two months from the date of submission of such papers by the petitioner. As regards the claim towards medical reimbursement, the petitioner shall also submit medical bills, if not submitted so far, and the period of three months shall be counted from the date of submission of such bills. As regards the payment of interest, the same shall not apply in relation to the family pension and reimbursement regarding medical expenses and hospitalisation charges.

14. The rule is made absolute in above terms with no order as to costs.

( R.M.S.KHANDEPARKAR, J )

( V.M.KANADE, J )